

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WAYNE BIDDLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 03-051-KAJ
	)	
THOMAS L. CARROLL, et. al.,	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM ORDER**

Before the Court are Wayne Biddle's ("Plaintiff") Motions for Appointment of Counsel (Docket item ["D.I."] 19 and 41; the "Motions"). For the reasons that follow, Plaintiff's Motions are denied.

Plaintiff is a *pro se* litigant currently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. (D.I. 19.) On January 16, 2003, Plaintiff commenced this action by filing a Complaint under the Civil Rights Act, 42 U.S.C. §1983, alleging that DCC Warden Thomas Carroll and other prison officials<sup>1</sup> (collectively "Defendants") violated Plaintiff's rights. (D.I. 2) Specifically, Plaintiff alleges that Defendants' violated his 8<sup>th</sup> Amendment right to be free of cruel and unusual punishment by failing to protect him from a high security risk inmate who had assaulted Plaintiff. (*Id.* at 6.) Plaintiff further alleges that Defendant's acted with deliberate indifference to the risk of the situation and, as a result, Plaintiff has suffered

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<sup>1</sup> Betty Burris, Major Holman, Ron Drake, Lt. Roberts, Officer Merson, and Officer McCarroll. (D.I. 18)

harm. (*Id.*) Plaintiff, therefore, claims that Defendants' should be held liable in their individual and official capacities. (*Id.*)

On August 1, 2003 and December 22, 2003, Plaintiff filed these Motions. (D.I. 19 and 41.) In support of the Motions, Plaintiff argues that the issues in this case are complex and will require a substantial amount of investigation and discovery. (*Id.*)

A plaintiff has no constitutional or statutory right to the appointment of counsel in a civil case. See *Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997); *Tabron v. Grace*, 6 F.3d 147, 153-54 (3d Cir. 1993). However, under certain circumstances, the Court may appoint counsel to represent an indigent civil litigant. See 28 U.S.C. § 1915 (e)(1).

The standard for evaluating whether a court will appoint counsel to a civil litigant was articulated by the Third Circuit Court of Appeals in *Tabron* and *Parham*. Initially, the Court will examine the plaintiff's claim to determine whether it has some arguable merit in fact and law. *Parham*, 126 F.3d at 457. If the Court is satisfied that the claim is factually and legally meritorious, then it will examine the following factors: (1) the plaintiff's ability to present his own case; (2) the complexity of the legal issues; (3) the extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) the degree to which the case may turn on credibility determinations; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can attain and afford counsel on his own behalf. *Id.* at 457-58. However, this list is merely illustrative and, by no means

exhaustive. *Id.* at 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

Here, the *Parham-Tabron* factors do not weigh in favor of appointing counsel for Plaintiff. First, despite Plaintiff's inability to retain counsel, Plaintiff has presented his case in a clear and concise manner. It appears from the record before the Court that Plaintiff does not need assistance gathering facts to support his claim. Further, the issues, as currently presented, are not legally or factually complex. *Cf. Parham*, 126 F.3d at 459 ("A lay person ... should be able to comprehend what he has to prove when the legal issue is understandable.") While the case may turn on credibility determinations, this factor alone does not determine whether counsel should be appointed. *Cf. Parham*, 126 F.3d at 460 ("While the case ultimately may have relied upon credibility, it is difficult to imagine a case that does not.") Finally, it does not seem that the testimony of expert witnesses will be required. Therefore, the appointment of counsel for Plaintiff is not warranted.

Accordingly, it is hereby ORDERED that Plaintiff's Motions for Appointment of Counsel (D.I. 19 and 41) are DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

March 9, 2004  
Wilmington, Delaware